

AMENDED IN ASSEMBLY AUGUST 18, 2005

AMENDED IN ASSEMBLY JULY 1, 2005

AMENDED IN ASSEMBLY JUNE 22, 2005

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 323

Introduced by Senator Migden

February 16, 2005

An act to amend Section 7155 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Migden. Sales tax fraud.

The Sales and Use Tax Law imposes penalties for failure to file returns and for failure to remit the total taxes owed.

This bill would provide that any person who knowingly collected sales tax reimbursement, and who fails to timely remit that sales tax reimbursement to the State Board of Equalization, is liable for a penalty of 50% of the amount not timely remitted, as specified. The State Board of Equalization may relieve the penalty under specified circumstances.

This bill would also require a person to certify, under penalty of perjury, the facts upon which he or she bases his or her claim for relief, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7155 of the Revenue and Taxation
2 Code is amended to read:

3 7155. (a) (1) Any person who, for the purpose of evading
4 the payment of taxes due under this part, knowingly fails to
5 obtain a valid permit prior to the date on which the first tax return
6 is due shall be liable for a penalty of 50 percent of any tax
7 determined to be due for the period during which the person
8 engaged in business in this state as a seller without a valid
9 permit.

10 (2) This subdivision shall not apply to any person whose
11 measure of tax liability over the period during which he or she
12 was engaged in business in this state as a seller without a valid
13 permit averaged one thousand dollars (\$1,000) or less per month.

14 (3) This subdivision shall not apply to the amount of taxes due
15 on the sale or use of a vehicle, vessel, or aircraft, if the amount is
16 subject to the penalty imposed by Section 6485.1 or Section
17 6514.1.

18 (b) (1) Any person who knowingly collects sales tax
19 reimbursement, as defined in Section 1561.1 of the Civil Code,
20 and who fails to timely remit that sales tax reimbursement to the
21 board, shall be liable for a penalty of 50 percent of the amount
22 not timely remitted.

23 (2) This subdivision shall not apply to any person whose
24 measure of liability for the unremitted sales tax reimbursement
25 described in paragraph (1) averages one thousand dollars
26 (\$1,000) or less per month or does not exceed 5 percent of the
27 total measure of tax for which the tax reimbursement was
28 collected for the period in which tax was due, whichever is
29 greater.

30 (3) If the board finds that a person's failure to make a timely
31 remittance of sales tax reimbursement is due to a reasonable
32 ~~cause and circumstances beyond the person's control, or cause or~~
33 *circumstances beyond the person's control, and occurred*

1 notwithstanding the exercise of ordinary care and the absence of
2 willful neglect, the person shall be relieved of the penalty
3 imposed by this subdivision. Any person seeking to be relieved
4 of the penalty shall file with the board a statement, under penalty
5 of perjury, setting forth the facts upon which he or she bases his
6 or her claim for relief.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.